

Figure 19b, "864"), said method comprising: ... measuring the height variation of said first feature" Applicant respectfully traverses.

Johnson specifically states that the "Spot 858 views at least some of the post 856" (col. 17, line 37), "Spot 860a view at least some part of field area 854" (col. 17, lines 38-39) and that the "appropriate algorithm processes data from spots 858 and 860 to measure the thicknesses of the post 856 and field 854 ..." (col. 17, lines 43-45). Thus, Johnson is not measuring the thickness of a first feature in which dishing is occurring (Figure 19b, "852"), but is measuring the thickness of the second feature (Figure 19b, "854"). Johnson does not teach or suggest "measuring the dishing of a first feature" by "measuring the height variation of said first feature on said substrate" as recited in Applicant's Claim 1.

Accordingly, Applicant respectfully asserts that Johnson does not anticipate Claim 1 for at least the reasons provided above. Claims 2-4 and 10 depend from Claim 1 and are thus not anticipated by Johnson for at least the same reasons. Moreover, Applicant notes that the apparatus described in column 4, lines 1-26 is not a differential interferometer or a laser displacement sensor as recited in Claim 10.

In addition, the attached Declaration Pursuant to 37 C.F.R. §1.131 by Jaime Poris, and accompanying exhibit, shows the conception of the subject matter of Claims 1-4 and 10 was prior to the effective priority date of Johnson. The attached Declaration by Applicant's Attorney Pursuant to 37 C.F.R. §1.131, and accompanying exhibits, shows that there was diligence between the effective priority date of Johnson and the constructive reduction to practice of the present application.

It should be noted that the effective priority date of Johnson is April 4, 2000. Johnson was filed as a regular application on February 12, 2001, and purports to claim priority to two provisional applications; No. 60/172,851 (the '851) filed December 10, 1999, and No. 60/194,651 (the '651) filed April 4, 2000. A nonprovisional application claiming the benefit of the provisional application must be "filed not later than 12 months after the date on which the provisional application was filed". 35 U.S.C. §119(e), and see 35 U.S.C. §111(b)(5) and MPEP § 201.04(b). The non-provisional application that became Johnson (US 6,340,602 B1) was filed over 14 months after the '851 provisional application and, thus, Johnson may not properly claim priority to the '851 provisional application. Accordingly, the earliest effective priority date of Johnson is April 4, 2000.

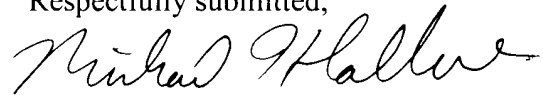
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Claims 1-19 are pending of which Claims 1-4 and 10 were rejected and Claims 5-9 and 11-13 were objected to as being dependent on a rejected base claim. Claims 14-19 were allowed. For the above reasons, Applicant respectfully requests allowance of Claims 1-19. Should the Examiner have any questions concerning this response, the Examiner is invited to call the undersigned at (408) 982-8200, ext. 2.

**Via Express Mail Label No.
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Respectfully submitted,



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